DOCUMENT RESUME

ED 142 013 EC 101 380

AUTHOR Friedman, Paul; Beck, Ronna Lee
TITLE Mental Retardation and the Law: A Report on Status of Current Court Cases.
INSTITUTION President's Committee on Mental Retardation, Washington, D.C.
REPORT NO DHEW-OHD-77-21012
PUB DATE Apr 77
NOTE 34p.

EDRS PRICE MF-$0.83 HC-$2.06 Plus Postage.
DESCRIPTORS *Civil Liberties; *Court Cases; *Court Litigation; Employment; Equal Education; Legal Problems; *Mentally Handicapped

ABSTRACT

Included in the report are summaries of four new cases and updated information on 38 cases regarding legal issues in mental retardation. Featured is a review of cases dealing with liability of judges and lawyers in violating the rights of mentally retarded persons. Other issues addressed (with sample court case in parentheses) include commitment (Poe v. Weinberger, District of Columbia); education (Rainey, et al. v. Tennessee Department of Education, et al.); employment (Sonnenburg v. Bowen, Indiana); and treatment (Welsch v. Likins, Minnesota). (CL)

MENTAL RETARDATION and the LAW

A Report on Status of Current Court Cases

APRIL 1977

This issue of "Mental Retardation and the Law" contains reports on 4 new cases (indicated as new in the text by an asterisk) and updated information on 38 cases reported in previous issues. Of special interest are the supplemental consent agreement in New York State Association for Retarded Children v.Carey, the Eighth Circuit's opinion in Welsch v. Likins, and the District Court's award of attorney fees in Gary W. v. Louisiana. Also included as a feature are two cases holding lawyers and judges accountable for violations of mentally retarded persons' rights.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Assistant Secretary for Human Development
President's Committee on Mental Retardation
Washington, D.C. 20201 U.S.A.

DHEW Publication No. (OHD) 77-21012

Prepared by Mr. Paul Friedman
and Ms. Ronna Lee Beck for the
President's Committee on Mental
Retardation, with support from
the Office of Child Development.

TABLE OF CONTENTS

		Page
I.	FEATURE	1
II.	CURRENT CASES	6
	A. CLASSIFICATION	6
	Illinois: In the Matter of Donald Lang*.	6
	B. COMMITMENT	7
	District of Columbia: Poe v. Weinberger	7
	Pennsylvania: Bartley, et al v. Kremens, et al.	7
	C. EDUCATION	7
	Arizona: Eaton, et al. v. State of Arizona. . . .	7
	Illinois: C.S., et al. v. Deerfield Public School District #109	7
	Illinois: W.E., et al v. Board of Education of the City of Chicago, et al.	7
	Indiana: Dembowski v. Knox Community School Corporation, et al..	7
	Mississippi: Mattie T. v. Holladay	7
	North Carolina: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al.	8
	Pennsylvania: Fialkowski v. Shapp	8
	Tennessee: Rainey, et al. v. Tennessee Department of Education, et al.*. .	8

* Cases reported for the first time in this issue are marked with an asterisk.

Page

Virginia: Kruse, et al v. Campbell, et al. 9

D. EMPLOYMENT. 9

Indiana: Sonnenburg v. Bowen 9

Massachusetts: Smith and Doe v. United States Postal Service 9

New Jersey: Schindenwolf, et al v. Klein, et al. 9

E. GUARDIANSHIP. 10

Connecticut: Albrecht v. Tepper 10

Michigan: Schultz v. Borradaile 10

F. LIMITATION ON TREATMENT 11

Massachusetts: Jones v. Saikewicz*. 11

G. PROTECTION FROM HARM. 11

New York: New York State Association for Retarded Children v. Carey. 11

Pennsylvania: Romeo v. Youngberg 12

H. STERILIZATION 13

District of Columbia: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al. 13

North Carolina: Cox v. Stanton, et al. 13

North Carolina: Trent v. Wright 13

I. TREATMENT 13

District of Columbia: Dixon v. Weinberger. . . . 13

Page

District of Columbia: Evans v. Washington. . . . 13

Florida: Donaldson v. O'Connor 13

Louisiana: Gary W. v. State of Louisiana. . . . 13

Maine: Wouri v. Rosser 14

Maryland: Bauer v. Mandel 14

Maryland: United States v. Solomon, et al. 14

Minnesota: Welsch v. Likins 14

Mississippi: Doe v. Hudspeth. 18

Missouri: Barnes, et al. v. Robb, et al. 18

Montana: United States v. Mattson. 18

Nebraska: Horacek, et al. v. Exon, et al. 18

New York: New York State Association for Retarded Citizens, Inc. v. Carey*. 19

Ohio: Ohio Association for Retarded Citizens v. Moritz. 19

Pennsylvania: Halderman v. Pennhurst State School and Hospital. 19

Washington: Preston v. Morris. 19

Washington: Washington v. White and Morris . . . 19

J. ZONING. 20

California: Los Angeles v. California Department of Health 20

Michigan: Michigan Association for Retarded Citizens v. the Village of Romeo. 20

III. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW" 21

I. FEATURE

JUDGES AND LAWYERS, TOO, ARE BEING CHALLENGED FOR VIOLATING THE RIGHTS OF MENTALLY RETARDED PERSONS

Commissioners, superintendents and mental health professionals charged with delivering services to mentally retarded persons often complain bitterly that they have been singled out for attack by legal advocates for mentally retarded persons. "What about judges and lawyers?" they ask, pointing out that these persons, too, may be involved in either negligent or even malicious violations of constitutional rights. This feature briefly considers two recent cases in which lawyers and judges have been put under scrutiny for alleged violations affecting mentally retarded persons.

> State of Wisconsin ex rel. David Memmel and Judith Pagels v. Edwin A. Mundy, Case No. 441-417 (Cir. Ct., Milwaukee County, Wis., August 18 and September 7, 1976), appeal dismissed and rights declared by the Supreme Court of the State of Wisconsin, January 18, 1977.

This case began when David Memmel petitioned the circuit court for a writ of habeas corpus, alleging that he had been illegally involuntarily committed to the county's mental health center for treatment by the director of the Milwaukee County institution. Shortly after, Judith Pagels moved to intervene in the proceedings on behalf of a class of persons involuntarily committed to the Milwaukee County mental health center for treatment. After a hearing, the Wisconsin circuit court ordered that more than 1,000 persons involuntarily committed between January 1975 and September 1976 had to be released or given new hearings because their court-appointed attorneys violated their constitutional rights by failing to provide adequate representation. Wisconsin Circuit Court Judge John E. McCormick found that the probate court judges in Milwaukee County had consistently made appointments of counsel to represent the persons involved from a closed panel of lawyers who were compensated by the court and who failed to adequately represent their clients. In his opinion, McCormick noted that the defendants' rights to due process of law, jury trial and the effective assistance of counsel had been systematically violated:

> "It appears that the probate court judges placed a higher value on disposing of the property of dead people than [they] did on the liberty and welfare of living citizens....The record presented by this case is as bleak a picture as has probably ever been presented of justice in Mulwaukee County. A massive and systematic deprivation of the constitutional rights of people who are unable to voice their own protests has been accomplished by the cooperaton of the bench and bar of Milwaukee County. It is unconscionable that lawyers and judges who are trained in the law and who have a special

duty to protect the constitutional rights of those who are unable to protect themselves could participate in such a scheme to bilk citizens of their constitutional rights. Although this suit names the director of Milwaukee County institutions, the onus of the debacle lies squarely with the lawyers and judges who operated this 'greased runway to the county mental health center' as the Milwaukee Journal recently characterized the commitment system."

In its finding of facts, the court outlined a number of factors which prompted its strong opinion -- only one of nearly 1,300 cases was tried by a jury between January 1, 1974, and April 1, 1976; the closed panel of court-appointed attorneys failed to cross-examine two out of every three witnesses against defendants, and asked an average of only two questions for all witnesses; the right of persons subject to civil commitment to subpoena witnesses in their favor was waived in 99% of the cases; the probate court judges failed to advise persons subject to commitment of their post-trial rights to appeal by way of petition of habeas corpus and for reexamination (as the court stated, "It is perhaps more important to advise the defendant in a mental commitment case than it is to advise a defendant in a criminal case because of the possible lack of understanding on the part of the defendant who is alleged to be mentally ill."); on numerous cases the court-appointed attorneys joined in urging commitment or detention, even though their "clients" did not wish to be committed; and although most of the probable cause hearings were grossly defective, the closed panel of attorneys never filed any motions attacking their sufficiency.

Judge McCormick noted that a citizen's right to counsel in a case where a deprivation of liberty is at issue is "perhaps the preeminent legal right of our constitutional system" and that "without this right, all the other rights contained in our law are completely meaningless." "The mere presence of counsel is not sufficient to satisfy the requirements of the Constitution. A lawyer who does nothing or who assists the prosecution is obviously not the effective assistance of counsel that is envisioned by the Sixth and 14th Amendments to the Constitution. These petitioners would undoubtedly have been better off without any counsel whatever, rather than to be represented by counsel who became a part of the prosecution effort to detain or commit them."

The order of the Milwaukee circuit court directed the following:

a. Defendant Mundy was directed to either release forthwith those persons presently committed to the Milwaukee County mental health center or to initiate rehearings for such persons within 60 days;

b. Defendant was directed to prepare a list of all such patients at the mental health center as of September 1, 1976, and counsel for both parties were to be provided the list detailing those persons who would be released and those who would be given new hearings;

c. Defendant's attorneys were to consult with the county executive, county board of supervisors and respondents' attorneys to formulate and present (to the trial court) a permanent plan to provide for the defense of indigent, allegedly mentally ill patients;

d. Defendant was to insert a notation in the medical and hospital records of all persons involuntarily committed, such notation to indicate that the commitment had been declared invalid by order of the trial court;

e. Milwaukee County was directed to pay the costs of the actions to plaintiffs' attorneys.

This order of the circuit court was not appealed from and is thus a final order. Also on September 7, 1976, the circuit court issued an order providing that "the Legal Aid Society of Milwaukee shall represent indigent patients at involuntary mental commitment proceedings until a permanent plan to provide such representation can be presented to the trial court." This order was appealed to the Wisconsin Supreme Court, which upheld the order in its January 18 decision. According to the Wisconsin Supreme Court, appointed counsel in court-appointed cases has

> "...the same function, duties and responsibilities as he would have as if he were retained by the person involved as his or her own attorney....The duties and responsibilities of lawyer to client in this state are set forth in the Code of Professional Responsibility promulgated by this Court. They include preserving the confidences and secrets of a client, exercising independent professional judgment on behalf of a client, representing a client competently, and representing a client zealously within the bounds of the law." (Footnotes omitted.)

The Wisconsin Supreme Court interpreted the order involving Milwaukee Legal Aid as an appropriate emergency order to insure constitutionally adequate representation for the class of persons ordered released or reheard. At the same time, it expressly approved the procedure adopted by the Milwaukee County Board of Judges whereby appointments of counsel in civil commitment cases in the future would be made seriatim from a list of attorneys prepared by the Milwaukee Bar Association and approved by the Court.

> Linda Kay Sparkman and Leo Sparkman v. Ora E. McFarlin, et al., No. 76-1706 (7th Cir., March 23, 1977).

The question on appeal of this Indiana case to the Seventh Circuit Court of Appeals was whether a state court judge who ordered the sterilization of a 15-year-old girl is judicially immune from liability under the federal civil rights statutes.

In 1971 Defendant Ora E. McFarlin sought a court order to have her 15-year-old daughter Linda sterilized. Defendant Warren G. Sunday, an

attorney, prepared a petition containing an affidavit by McFarlin which stated that Linda was "somewhat retarded," although she attended public schools and had been "passed along with other children in her age level." McFarlin further alleged that, without her knowledge, Linda had begun dating and staying overnight with older youths and men, and that she could not maintain a continuous observation over Linda to "prevent unfortunate circumstances." The petition was presented to Defendant Judge Harold D. Stump who issued the requested order in an ex parte proceeding. No guardian ad litem was presented to represent Linda's interest and no hearing was held. Linda received no notice of the petition, and neither the petition nor the order was ever filed by the court.

After Judge Stump had signed the order, Linda was taken to a hospital, where a tubal ligation was performed by doctors who were also named as defendants in the case. She was not informed of the true consequences of the surgery, and in fact was told that the purpose of the hospital visit was to have her appendix removed.

In 1973 Linda married Plaintiff Leo Sparkman. Two years later she learned for the first time that she had been sterilized. The couple brought an action seeking damages under 42 U.S.C. §§1983 and 1985(3), contending that the actions of the defendants in sterilizing her or causing her to be sterilized violated her constitutional rights. She attached pendent state claims for assault and battery and medical malpractice. Leo Sparkman asserted a pendent claim for loss of potential fatherhood. The district court granted defendants' motions to dismiss the federal claims. It found that the only state action present, necessary to the federal claims, was the approval of the petition by Judge Stump. It then held that Judge Stump was "clothed with absolute judicial immunity" so that neither he nor any of the other defendants alleged to be co-conspirators, were liable under the Civil Rights Act.

In reversing the district court decision and remanding this cause of action for further proceedings, the Seventh Circuit Court of Appeals noted that the purpose of the doctrine of judicial immunity is to permit judges to exercise their judicial function independently, without fear of civil liability. It is available even where malicious or corrupt action on the part of a judge is alleged. But the court went on to note that judicial immunity is available, however, only where the judge has jurisdiction. Thus, the crucial issue upon which immunity was held to turn in this case was whether Judge Stump acted within his jurisdiction when he approved the petition to have Linda Sparkman sterilized. According to the Seventh Circuit, the purported judicial action of Defendant Stump had no support in either state statutes or previous common law, and Judge Stump could only claim to be acting lawfully if the remedy of sterilization that he imposed was a valid exercise of the power of courts to fashion new common law. The Seventh Circuit then went on to conclude:

"We hold that it was not. Although courts ought not to be discouraged from creating innovative legal remedies to meet changing social conditions, they may not use the power to create new decisional law to order extreme and irreversible remedies such as sterilization in situations where the legislative branch of government has indicated that they are inappropriate. If we were to say that jurisdiction existed to order sterilization without adherence to the requirements of institutionalization and procedural due process mandated by the Indiana legislature, we would be sanctioning tyranny from the bench. There are actions of purported judicial character that a judge, even when exercising general jurisdiction, is not empowered to take.

"Even if defendant Stump had not been foreclosed under the Indiana statutory scheme from fashioning a new common law remedy in this case, we would still find his action to be an illegitimate exercise of his common law power because of his failure to comply with elementary principles of procedural due process. Here a juvenile was ordered sterilized without the taking of the slightest steps to ensure that her rights were protected. Not only was the plaintiff not given representation, she was not even told what was happening to her. She was afforded no opportunity to contest the validity of her mother's allegations or to have a higher court examine whether the substance of those allegations, even if true, warranted her sterilization. Finally, the petition and order were never filed in court. This kind of purported justice does not fall within the categories of cases at law or in equity."

The Memmel and Sparkman cases are reported in some detail here because it is possible that they represent the beginning of a trend to scrutinize more carefully the responsibilities of judges and lawyers in cases affecting mentally handicapped persons. These cases show that along with state officials charged with the delivery of services, judges and lawyers, too, will be held accountable for negligent or malicious violations of the constitutional rights of mentally retarded persons.

II. CURRENT CASES

A. CLASSIFICATION

ILLINOIS: In the Matter of Donald Lang,* No. 76 Crim. 064 (Cir. Ct., Cook County, Ill.), decided December 8, 1976.

The respondent, Donald Lang, was convicted of murder in January 1972. On February 14, 1975, the Appellate Court reversed the conviction on grounds that, absent trial procedures to effectively compensate for his disabilities, his conviction was unconstitutionally impermissible. The respondent was deaf and had never been taught to read, to write, to use sign language, or to communicate in any language.

On March 25, 1976, Lang was adjudged unfit to stand trial and pursuant to state law was remanded to the custody of the Department of Mental Health for evaluation. Subsequently, a hearing was held to determne whether or not Lang was either in need of mental treatment or mentally retarded and dangerous.

At the hearing three expert witnesses, including two clinical psychologists and a psychiatrist, testified on behalf of the state that Lang was likely to be dangerous to himself or others as a result of mental retardation.

Numerous witnesses testified on Lang's behalf that he was not mentally retarded, but rather lacked communication skills.

On December 8, 1976, the court ruled that the state failed to meet its burden to show by clear and convincing evidence that Lang was in need of mental treatment or that he was mentally retarded and dangerous. In so ruling, the court stated that, "Because of the complex nature of the problems of the deaf, the court recognizes it is extremely difficult to evaluate the capabilities of the deaf."

Nevertheless, the court evaluated the conflicting testimony by giving greater weight to the expert testimony of witnesses who had prior experience with deaf individuals by crediting as more reliable the higher I.Q. ratings and by looking to Lang's adaptive behavior, rather than relying solely upon an I.Q. test. The court held that to rely solely on an I.Q. test would be constitutionally impermissible.

In its opinion the court noted that present Illinois law does not permit commitment of a person who is unfit to stand trial and who has demonstrated violent behavior, but who is neither mentally ill or mentally retarded. As a condition of Lang's bail, however, the court ordered that (1) Lang must continue in a training program which shall have as its purpose the teaching of communication skills in order to make Lang fit for trial, and (2) that Lang reside in a setting with sufficient

security to insure the continuity of treatment and his appearance in court.

The court ordered the Department of Mental Health to collaborate w . Lang's attorneys to develop an appropriate training program and living arrangement in compliance with the special conditions of bail.

B. COMMITMENT

DISTRICT OF COLUMBIA: Poe v. Weinberger, No. 74-1800 (D.D.C.), filed December 10, 1974.

The case remains off the court calendar pending resolution of Bartley v. Kremens in the United States Supreme Court.

PENNSYLVANIA: Bartley, et al. v. Kremens, et al., 402 F. Supp. 1039 (E.D. Pa. 1975).

The Supreme Court has not yet issued its decision in this case.

C. EDUCATION

ARIZONA: Eaton, et al. v. State of Arizona, Civil No. 329028 (Superior Ct., Ariz.), filed December 10, 1974.

No new developments.

ILLINOIS: C.S., et al. v. Deerfield Public School District #109, Civil No. 73 1 284 (Circuit Ct., 19th Judicial Circuit, Lake County, Ill.).

Defendants' motion to dismiss was denied without a written opinion.

ILLINOIS: W.E., et al. v. Board of Education of the City of Chicago, et al., Civil No. 73 CH 6104 (Circuit Ct., Cook County, Ill.).

No new developments.

INDIANA: Dembowski v. Knox Community School Corporation, et al., Civil No. 74-210 (Starke County Ct., Ind.), filed May 15, 1974.

No new developments.

MISSISSIPPI: Mattie T. v. Holladay, Civil No. DC-75-31-S (N.D. Miss.), filed April 25, 1975.

On October 4, 1976 federal district Judge Orma R. Smith issued an order resolving a conflict between the requirements of a Rule 45, F.R.Civ.P.,

subpoena duces tecum and the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. §1232g. The issue decided by the court arose when plaintiffs sought, through a subpoena duces tecum, to review certain educational records. The subpoena informed the witness that he could comply by producing the documents in a non-personally identifiable form, i.e., with the names and other identifying information of parents and children marked out. Nontheless, the witness refused to produce the documents, claiming that FERPA required plaintiffs to provide prior notice to the parents of all the children whose records were sought by the subpoena. The court held, inter alia, that FERPA did not require plaintiffs to issue such a notice and that, in fact, FERPA did not even apply since the subpoena called for non-personally identifable documents. This decision removes a signficant stumbling block to federal discovery in education cases.

Plaintiffs' motion to certify the class, as well as defendants' motion to dismiss, are still pending before the court.

NORTH CAROLINA: North Carolina Association for Retarded Children, et al. v. State of North Carolina, et al., Civil No. 3050 (E.D.N.C.), filed May 18, 1972.

No new developments.

PENNSYLVANIA: Fialkowski v. Shapp, 405 F. Supp. 946 (E.D. Pa. 1975).

No new developments.

TENNESSEE: Rainey, et al. v. Tennessee Department of Education, et al.,* No. A-3100 (Chancery Ct., Nashville, Tenn.).

This class action brought by handicapped children alleging non-compliance with Tennessee's Mandatory Education Law for Handicapped Children and Youth was originally settled by a consent decree in July 1974.

The court has since responded to the defendants' failure to comply with the consent decree and the failure of the legislature to appropriate funds for special education. The court has ordered the defendants to submit an implementation plan by March 1, 1977, and to implement the plan no later than July 1, 1977.

To ensure compliance the court has further ordered:

> "From and after that date, the defendants shall be enjoined from expending money for the operation of a public school system in this state unless the plan to be submitted is incorporated into the operation of the department of education and fully pursued to implement the consent decree."

The court explained its potential injunction as follows:

> "This decision does not require the defendants to seek appropriations or raise additional monies to fund the program passed by the legislature in 1972. It does say to the defendants that if the State intends to have a free public school system it cannot discriminate against a small and politically powerless minority. Adjustments must be made in the program to fulfill the requirements of the law. Our Constitution and the Federal Constitution do not allow individuals or whole branches of government to ignore the law and discriminate against a helpless minority."

VIRGINIA: Kruse, et al. v. Campbell, et al., Civil No. 75-0622-R (E.D. Va.), filed December 1, 1975.

The three-judge panel ruled on March 23, 1977, that the state must provide appropriate private education to all poor handicapped students commensurate with the education available to the more affluent handicapped children until appropriate public education is available to them.

The court gave the state 30 days to devise a plan to provide special education for all of the state's handicapped children. The ruling also requires that handicapped youths who have been placed in the state's custody to receive special education must be returned to their parents or guardians within 60 days.

D. EMPLOYMENT

INDIANA: Sonnenburg v. Bowen, Civil No. P.S.C. 1949 (Porter Cty. Cir. Ct., Ind.), filed October 9, 1974.

No new developments.

MASSACHUSETTS: Smith and Doe v. United States Postal Service, Civil No. 76-2452-S (D. Mass.), filed June 21, 1976.

No new developments.

NEW JERSEY: Schindenwolf, et al. v. Klein, et al., Civil No. L-41293-75 PW (Superior Ct., N.J.), filed June 25, 1976.

On November 8, 1976, the court denied defendants' motion to dismiss and, in the alternative, their motion to transfer to the Appellate Division.

The court granted, however, the defendants' motions to dismiss that part of the complaint which relies on the applicability to the case of the state and federal minimum wage statutes.

Plaintiffs have filed a brief with the Appellate Division seeking leave to immediately appeal that part of the motion to dismiss which was granted. The Appellate Court has not yet ruled whether it will permit the interlocutory appeal.

E. GUARDIANSHIP

CONNECTICUT: Albrecht v. Tepper (Carlson), Civil No. H-263 (D. Conn.), decided February 10, 1977.

On February 10, 1977, the court ruled on plaintiffs' Motion for Final Judgment and Supplemental Relief.

In its ruling, the court stated that defendants' unwillingness to refund directly to the committed plaintiffs the moneys which are still held by the statutory conservator is an unconstitutional assertion of power. Nonetheless, holding that the Eleventh Amendment leaves the court powerless to compel the state to pay over the moneys to the plaintiffs, even though the moneys may have been seized unconstitutionally, the court declined to order defendants to send out a notice which would have informed the class members that they "may reclaim this money by writing [the defendant] a letter directly." The court explained that:

> "Such a notice would unfairly inflate the expectations of the individual patients where the court has no means of insuring compliance by the Department of Finance and Control with the quoted procedure."

The court did, however, enjoin the defendants from continuing to notify class members that "We plan to continue holding these funds on your behalf until you are discharged or a proper person such as a conservator claims the funds." The court found such notice a "blatant attempt to perpetuate" the very distinctions previously found infirm, since plaintiffs who may not be incompetent by virtue of their commitment are in fact "proper persons" to claim the funds.

In its order, the court permanently enjoined defendants from accepting any additional moneys as statutory conservator. In addition, the court noted that while the Eleventh Amendment precludes the award of damages against the state in a federal court, plaintiffs are not barred from seeking relief in state court.

MICHIGAN: Schultz v. Borradaile, Civil No. 74-40123 (E.D. Mich), filed October 25, 1974.

On January 21, 1977, Judge Harvey ruled on all pending preliminary motions. In essence, the judge found that the plaintiffs had standing to raise constitutional issues both with regard to the old Michigan guardianship law (which still is in effect for some adults), and the

newer Michigan law with regard to guardianships over mentally retarded persons.

The court also noted that there may be a question of abstention in the case but reserved judgment on that issue for a three-judge court. The three-judge court has set May 23, 1977, as a hearing date on the plaintiffs' motion for summary judgment.

F. LIMITATION ON TREATMENT

MASSACHUSETTS: Jones v. Saikewicz,* No. 711 (Mass. Sup. Jud. Ct.), decided July 9, 1976.

The Massachusetts Supreme Judicial Court has upheld the authority of the probate court in this case to order the withholding of medical treatment from a terminally ill incompetent individual.

The patient in this case is a 67-year-old profoundly retarded resident of a state institution who suffers from acute myeloblastic monocetic leukemia. After a full evidentiary hearing at which the patient was represented by a guardian ad litem, the court followed the guardian ad litem's recommendation to withhold chemotherapy treatment.

The evidence at the hearing showed that:

1. chemotherapy was the only available treatment;

2. it would perhaps prolong the patient's life from 2 to 13 months, but would not produce a cure;

3. there are substantial toxic effects of chemotherapy; and

4. in the absence of chemotherapy the patient would die a relatively painless death in a few weeks or months.

At the conclusion of the hearing the court decided not to approve the treatment and ordered that all other necessary supportive measures be undertaken to safeguard the defendant's health and to reduce his suffering. The probate court then reported the case to the appeals court, which affirmed the ruling.

G. PROTECTION FROM HARM

NEW YORK: New York State Association for Retarded Children v. Carey (Willowbrook), 393 F. Supp. 714 (E.D.N.Y. 1975), 357 F. Supp. 752 (E.D.N.Y. 1973).

On the eve of a contempt trial against three officials of the state Mental Hygiene Department for failure to implement the terms of the

Willowbrook consent decree, the parties entered into a 28-point stipulation which was ratified by the Federal District Court on March 10, 1977, and in view of which plaintiffs have agreed to withdraw their motion for contempt. Under the new stipulation, the state has agreed to contract with United Cerebral Palsy for the operation of five of the Willowbrook Developmental Center's 26 buildings, in what ultimately may be a model for a new role by non-profit groups. Also outlined in the stipulation is a timetable for community placements. Fifty residents per month must be placed in the community from April 1 to October 1, 1977; 75 per month from October 1 to April 1, 1978; and 100 per month from April 1, 1978 to April 1, 1979. Thus, under this agreement, the state has agreed to place 1,950 Willowbrook residents into the community by 1979. At the same time that they are geared to speeding up the placement process, the stipulations are designed to insure that those persons placed in the community will be protected from abuse or "dumping." To facilitate appropriate placements on schedule, the order calls for the hiring of additional placement staff during each phase. For example, under the new agreement, the state must hire 140 case management specialists, who will provide "direct ongoing case coordination for community clients." The idea is that these specialists will follow Willowbrook residents into the community and insure that the services they receive are adequate. The state is also required to speed up the inspection and review of potential living sites for retarded persons, to develop adequate funding for community protection and advocacy plans, and to contract with an outside agency to develop a toilet-training program at Willowbrook.

The new consent judgment further requires the establishment of an office in each borough to coordinate services for retarded persons and to aid in community placement and adjustment by October 1, 1977; the referral of all acts of discrimination against community placement of retarded persons to the New York State Division of Human Rights or the New York City Commission on Human Rights; the appointment by the governor of an individual to resolve disputes or obstacles impeding implementation of the consent judgment; and the screening of 329 former residents now living in upstate facilities to decide which ones can be placed in the community. Also on March 10, 1977, Federal District Judge J. R. Bartels denied a motion by attorneys for the defendants to dismiss the contempt proceedings against them, at least until additional points, to be negotiated, were presented in court in April.

PENNSYLVANIA: Romeo v. Youngberg, Civil No. 76-3429 (E.D. Pa.), filed November 1976.

Discovery is proceeding pending argument on defendants' motion to dismiss, in which they squarely attack the developing doctrine that state officials at an institution for the mentally retarded have a constitutional duty to protect the residents from harm.

H. STERILIZATION

DISTRICT OF COLUMBIA: Relf v. Weinberger; National Welfare Rights Organization, et al. v. Weinberger, et al., 372 F. Supp. 1196 (D.D.C. 1974), 403 F. Supp. 1235 (D.D.C. 1975).

No new developments.

NORTH CAROLINA: Cox v. Stanton, et al., Civil No. 800 (E.D.N.C.), filed January 8, 1974.

No new developments.

NORTH CAROLINA: Trent v. Wright (E.D.N.C.), filed January 18, 1974.

No new developments.

I. TREATMENT

DISTRICT OF COLUMBIA: Dixon v. Weinberger, 405 F. Supp. 974 (D.D.C. 1975).

No further developments since the January 1977 issue of "MR and the Law."

DISTRICT OF COLUMBIA: Evans and the United States v. Washington, Civil No. 76-0693 (D.D.C.), filed February 23, 1976.

On January 2, 1977, the court granted the motion of the United States to change its status from amicus curiae to plaintiff-intervenor.

FLORIDA: Donaldson v. O'Connor, 422 U.S. 563, 95 S. Ct. 2486 (1975).

The consent judgment was signed and ratified on February 4, 1977, by Federal District Court Judge William Stafford in Talahassee, Florida, ordering Dr. John G. Gumanis and the estate of Dr. J. B. o'Connor each to pay $10,000 to Mr. Donaldson. Plaintiff has filed a motion asking the court to rule that he is entitled to attorneys' fees, and Defendant Gumanis has also requested attorneys' fees. The court has yet to rule on these motions.

LOUISIANA: Gary W. v. State of Lousiaiana, et al., Civil No. 74-2412 (E.D. La.), decided July 26, 1976.

On January 24, 1977, the court amended in several minor respects its principal order of December 2, 1976.

On February 3, 1977, the court awarded plaintiffs' attorneys fees under the Civil Rights Attorneys' Fees Awards Act of 1976 in the amount of $204,916.88.

MAINE: Wouri v. Rosser, Civil No. 75-80-SD (S.D. Maine), filed August 22, 1975.

On January 28, 1977, the court, again postponing the case, ordered the parties to resume negotiations for a consent decree. Negotiations are still in process, and it now seems possible that plaintiffs and defendants will be able to arrive at a consent decree which would bring this litigation to a close.

MARYLAND: Bauer v. Mandel, Civil No. 22-871 (Anne Arundel County Circuit Ct.), filed September 1975.

Plaintiffs have filed a motion to compel production of documents, but a hearing date has not yet been set. Plaintiffs have also filed a motion for leave to file more than 30 interrogatories. Plaintiffs and defendants have been attempting to resolve the discovery dispute underlying plaintiffs' filing more than 30 interrogatories. Under state rules, only 30 interrogatories may be filed without leave of court. These discovery negotiations are still under way. Defendants' motion to dismiss, which was filed last year, has been heard, but the court has still not ruled on the motion.

MARYLAND: United States v. Solomon, et al., 419 F. Supp. 358 (D. Md. 1976), appeal docketed, No. 76-2184 (4th Cir., October 21, 1976).

Oral argument is scheduled for April 5, 1977.

MINNESOTA: Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974).

On March 9, 1977, the U.S. Court of Appeals for the 8th Circuit issued its opinion on the two appeals arising out of decisions in Welsch by the United States District Court for the District of Minnesota. The Court of Appeals affirmed the District Court's order of March 30 and the portion of the order of May 19, 1976, denying plaintiff's motion for the convening of a three-judge district court. It also affirmed the District Court's order of April 15, 1976, modifying and strengthening the earlier order on standards for Cambridge State Hospital. The Court of Appeals vacated the highly controversial district court order of July 28, 1976, under which Judge Larson had enjoined the operation of state financial and administrative statutes and policies insofar as their enforcement would interfere with the equitable relief required by the District Court's prior orders. While suggesting that the District Court might well have the power to issue such an order in appropriate circumstances, the Court of Appeals remanded the case for further consideration after the Minnesota legislature has completed its current session, which was still in progress at the time of the Court of Appeals' order. With regard to the District Court's order modifying and strengthening standards, the Court of Appeals observed:

"In attacking the order of April 15, 1976 the defendants do not argue, nor could they argue successfully, that a federal district court acting within the framework of a suit brought under 42 U.S.C. §1983 does not have the power to correct unconstitutionalities by means of an injunction and to include in its decree affirmative requirements which may be onerous and which may require the expenditure of public money that otherwise would not have been spent or would have been spent for something else.

"The power of a district court to impose standards with respect to a mental institution was expressly recognized in Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974). The United States District Court for the Eastern District of Arkansas and this court have imposed affirmative requirements as well as prohibitions on the Arkansas Department of Correction which have cost the State of Arkansas vast amounts of money....And, of course, requirements that have been made by this court and by other courts in cases involving the racial integration of public schools are not to be overlooked.

"The defendants earnestly contend, however, that the additional requirements imposed by the order of April 15, and particularly the personnel or staffing requirements, were so unreasonable, unnecessary and burdensome that the impositions amounted to a violation of the underlying concept of federalism recently emphasized in Rizzo v. Goode, 423 U.S. 362 (1976).

"With regard to the staffing requirements of the April 15 order, counsel for the defendants say that compliance with those requirements would cost the State some two million dollars a year for Cambridge alone, and that if the requirements were extended to the other state hospitals that have been mentioned, the cost of compliance could run to as much as ten or twelve million dollars annually. And counsel argue that the defendants 'substantially complied' with the October, 1974 order, and that more should not have been required of them.

"It is not our function to try the case de novo. This is an appellate court. We are required to accept the factual findings of the district court unless clearly erroneous, and we think that great deference should be paid to the district court's exercise of its judgment and discretion in a case with which it has a high degree of familiarity.

"The question of whether additional requirements should be imposed on the defendants with respect to Cambridge, and, if so, what those requirements should be, was fully threshed out before an able, experienced and conscientious trial judge who by the spring of 1976 had acquired approximately four years of experience with the Cambridge State Hospital, with its facilities and programs, and with its staffing problems. Manifestly, he thought in 1976 that

additional requirements had to be made, and we are satisfied that he was convinced that the particular requirements that were made were necessary to eliminate the constitutional deprivations under which the residents had been laboring.

"We are not prepared to say that the district court erred in finding that additional requirements were necessary, and we are unwilling to disturb the particular requirements that were made." (Citations omitted.)

With regard to the order of July 28, 1976, which the Court of Appeals vacated and remanded to the trial court for further consideration, the Court of Appeals commented that:

"The obvious purpose of the order was to permit the Department of Public Welfare to comply with the earlier orders of the district court just as though the Minnesota Legislature had made appropriations adequate to permit compliance in accordance with normal Minnesota fiscal procedures. To put it bluntly, the order seems designed to short circuit ordinary legislative and administrative processes involving the expenditure of state funds. We will assume that the order, if upheld, would accomplish that purpose.

"In attacking the order the defendants contend that it was not only an abuse of judicial discretion but also that it was positively forbidden by the eleventh amendment to the Constitution of the United States and was contrary to the philosophy expressed in Rizzo v. Goode, supra.

* * *

"...The controversy is a serious one, and the legal questions presented are difficult, as the district court conceded. Apart from any questions of judicial discretion, the controversy raises the more fundamental question of whether the district court had the constitutional power to order administrative officers of the State to by-pass legally imposed restrictions on expenditures by disregarding the state laws imposing those restrictions.

* * *

"Conflicts between federal judicial power and state and local governments have arisen in the past and will doubtless arise again. But needless direct confrontations between a federal court and a state should be avoided, particularly in a field as delicate as the one here involved.

"If Minnesota chooses to operate hospitals for the mentally retarded, the operation must meet minimal constitutional standards, and that obligation may not be permitted to yield to financial con-

siderations. As Mr. Justice (then Circuit Judge) Blackmun of Minnesota said a number of years ago in another context, 'Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations. . . ." Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968).

"Alternatives to the operation of the existing state hospital system, including Cambridge, may appear undesirable, but alternatives do exist. An extreme alternative would, of course, be the closing of the hospitals and the abandonment by the State of any program of institutional care and treatment for mental retardees. A lesser alternative might be the reduction in the number of hospitals. Or the Legislature and the Governor might decide to reduce by one means or another the populations of the respective institutions to a point where the hospitals would be staffed adequately and adequate treatment could be given to individual residents. Primarily, it is the function of the state to determine whether it is going to operate a system of hospitals which comply with constitutional standards, and, if so, what kind of a hospital system it is going to operate. And it is the function of the federal court to determine whether the plans and steps taken or proposed by the state satisfy constitutional requirements. We think that all concerned would do well to keep that difference in function in mind.

"We do not know why the Legislature that met in 1975 failed to respond more positively to the 1974 requirements of the district court. It is possible that the then Governor and the Legislature did not fully appreciate the force of those requirements; or the Governor and the Legislature may have thought that there was a better way to reach the objectives that the district court thought must be achieved.

"In any event, we desire to make it clear to the present Governor and the current Legislature that the requirements of the 1974 Order and the requirements of the April 15, 1976 Order that we uphold today are positive, constitutional requirements, and cannot be ignored. We will not presume that they will be ignored. On the contrary, we think that experience has shown that when governors and state legislatures see clearly what their constitutional duty is with respect to state instituitons and realize that the duty must be discharged, they are willing to take necessary steps, including the appropriation of necessary funds.

"There is no suggestion that Minnesota lacks the funds necessary to enable the Department of Public Welfare to meet the requirements of the district court. The question is what priority the Legislature, in the face of competing demands for state funds, is willing to accord to its institutions for the mentally retarded. We think that the Legislature should have a chance to answer that question between now and the end of the current session.

"We vacate the district court's Order of July 28, 1976 and remand the whole case to the district court for further consideration after the current Legislature has completed its session. Depending on legislative response to the needs of Cambridge and the other hospitals, the district court may consider that its requirements should be modified in certain respects or that time schedules for compliance with the requirements should be altered. Or the district court may deem it necessary to adhere to present requirements." (Certain citations and footnotes omitted.)

MISSISSIPPI: Doe v. Hudspeth, Civil No. J 75-36 (N) (S.D. Miss.), filed February 11, 1975.

Trial in this case was scheduled for February 22, 1977. On February 17, 1977, however, the parties agreed to jointly request the court to continue the case until the defendants have completed the previously commenced repair and renovation of the 10 residential cottages and the activities building of the Central Mississippi Retardation Center, or until July 1, 1978, whichever is earlier.

Plaintiffs agreed to join in the request for a continuance in exchange for a signed agreement by the defendants. Defendants represented they have undertaken or plan to undertake various specified activities with respect to: (1) food and nutrition services; (2) physical therapy services; (3) medications; (4) developmental programming; (5) deinstitutionalization; and (6) information exchange.

The continuance was granted by the court.

MISSOURI: Barnes, et al. v. Robb, et al., Civil No. 75 CV87-C (W.D. Mo., Central Divison), filed April 11, 1975.

No new developments.

MONTANA: United States v. Mattson (Kellner), Civil No. 74-1-138-BU (D. Mont., September 29, 1976), appeal docketed, No. 76-3568 (9th Cir., December 3, 1976).

No new developments.

NEBRASKA: Horacek, et al. v. Exon, et al., Civil No. 72-L-299, Preliminary order, 357 F. Supp. 71 (D. Neb. 1973).

On January 4, 1977, the district court denied the defendants' motion to dismiss the United States as plaintiff-intervenor. In a later opinion the court stated that the decision to permit the United States to participate was within the court's discretion and justified by the significant involvement demonstrated by the United States in the field of treatment of mental retardation. Moreover, the court held that an objection to standing was untimely at this enforcement stage of the final decision.

A hearing has been scheduled to determine the status of implementation and the need for additional relief. Although originally scheduled for February 15, 1977, a request by the defendants for a 60-day continuance has been granted.

NEW YORK: New York State Association for Retarded Citizens, Inc. v. Carey* [Wassaic], No. 76 Civ. 2860 (S.D.N.Y., filed November 23, 1976).

This right to treatment-protection from harm class action has been filed by present or potential residents of the Wassaic Developmental Center and its satellite facilities. Plaintiffs seek declaratory and injunctive relief.

One of the novel legal arguments advanced by plaintiffs is that equal protection is being violated by provision of a higher level of facilities and services for residents of Willowbrook as a result of a voluntary agreement entered into between the parties in the Willowbrook action.

OHIO: Ohio Association for Retarded Children v. Moritz, Civil No. C-2-76-398 (S.D. Ohio), filed May 25, 1976.

On January 5, 1977, the court certified the class as described in the complaint.

Discovery is proceeding and the possibility of settlement is being explored.

PENNSYLVANIA: Halderman v. Pennhurst State School and Hospital, Civil No. 75-1345 (E.D. Pa.), filed May 30, 1974.

Trial is scheduled for April 18, 1977.

The Third Circuit Court of Appeals has, in the meantime, denied a petition for mandamus or a writ of prohibition filed by the Commonwealth of Pennsylvania challenging the district court's refusal to dismiss the United States as a plaintiff-intervenor. The Commonwealth has petitioned the United States Supreme Court for certiorari on this issue.

WASHINGTON: Preston v. Morris, Civil No. 77-9700 (Superior Ct., King County, Wash.), filed April 23, 1974.

No new developments.

WASHINGTON: Washington v. White and Morris, No. 4350-I (Ct. of Appeals, Wash.), decided January 31, 1977.

The state court of appeals held in this case that the trial judge exceeded his authority when he ordered the Department of Social and Health

Services to pay for the defendants' individualized rehabilitative treatment at a private facility. Finding that the defendant had neither a statutory nor a constitutional right to treatment at state expense as a condition of probation, the court reversed and remanded for resentencing.

J. ZONING

CALIFORNIA: Los Angeles v. California Department of Health, 2d Civil No. 48697 (Court of Appeals, Calif. Second Appellate District), decided November 2, 1976.

This case involved the validity of a state law exempting community care facilities from local restrictive zoning ordinances. The trial court upheld the law and the city of Los Angeles appealed.

The Court of Appeals affirmed the trial court's ruling in November 1976. In January 1977, the California Supreme Court denied the city's petition for a hearing, and the Court of Appeals' decision is now final.

MICHIGAN: Michigan Association For Retarded Children v. The Village of Romeo, Civil No. 670769 (E.D. Mich.). Federal Abstention Order, August 2, 1976. No. 76-6267-C2 (Mich. Cir. Ct., Macomb County), decided March 1, 1977.

On August 2, 1976, the federal court denied defendants' motion to dismiss but abstained from hearing the case, "until such time as the parties obtain a more definitive interpretation of the [contested zoning] ordinance from the state courts."

In response, plaintiffs filed suit in the Macomb County Circuit Court. On March 1, 1977, that court granted plaintiffs' motion for summary judgment. In ruling for plaintiffs, the court held that the word family as used in the zoning ordinance should be read broadly to permit establishment of a group home for eight minor children and two foster parents in an area zoned single-family residential.

III. CLOSED CASES REPORTED IN EARLIER ISSUES OF "MENTAL RETARDATION AND THE LAW"

A. ARCHITECTURAL BARRIERS

Alabama: Snowdon v. Birmingham-Jefferson County Transit Authority, No. 75-G-330-S (N.D. Ala.), decided June 24, 1975.

District of Columbia: Washington Urban League, Inc., et al. v. Washington Metropolitan Area Transit Authority, Inc., Civil No. 776-72 (D.D.C. 1976).

Maryland: Disabled in Action of Baltimore, et al. v. Hughes, et al., Civil Action No. 74-1069-HM (D. Md.).

Ohio: Friedman v. County of Cuyahoga, Case No. 895961 (Court of Common Pleas, Cuyahoga County, Ohio), consent decree entered November 15, 1972.

B. CLASSIFICATION

California: Larry P. v. Riles, No. C-71-2270 (N.D. Calif.), preliminary injunction order, 343 F. Supp. 1306 (1972), affirmed, 502 F.2d 963 (9th Cir. 1974); supplementary order, December 13, 1974.

Louisiana: Lebanks, et al. v. Spears, et al., consent decree, 60 F.R.D. 135 (E.D. La. 1973).

Massachusetts: Stewart, et al. v. Philips, et al., Civil Action No. 70-1199-F (D. Mass.), filed September 14, 1970.

C. COMMITMENT

District of Columbia: United States v. Shorter (Superior Ct., D.C.), decided November 13, 1974. No. 9076, (D.C. Ct. of Appeals), decided August 26, 1975.

Georgia: J.L. and J.R. v. Parham, No. 75-163-Mac (M.D. Ga., February 26, 1976).

Indiana: Jackson v. Indiana, 406 U.S. 715 (1972).

Michigan: White v. Director of Michigan Department of Mental Health, No. 75-10022 (E.D. Mich.), filed August 6, 1975.

Pennsylvania: Mersel v. Kremens, No. 74-159 (E.D. Pa.),decided August 20, 1975.

West Virginia: State ex rel. Miller v. Jenkins, No. 13340 (Supreme Ct. of Appeals, W.Va. at Charleston), decided March 19, 1974.

Wisconsin: State ex rel. Matalik v. Schubert, 47 Wis.2d 315, 204 N.W.2d 13 (Supreme Ct., Wis. 1973).

Wisconsin: State ex rel. Haskins v. County Court of Dodge County, 62 Wis.2d 250, 214 N.W.2d 575 (Supreme Ct., Wis. 1974).

D. - CRIMINAL LAW

District of Columbia: United States v. Masthers, 539 F.2d 721 (D.C. Cir. 1976).

Georgia: Pate, et al. v. Parham, et al., Civil No. 75-46 Mac. (M.D. Ga.), decided September 19, 1975.

E. CUSTODY

Georgia: Lewis v. Davis, et al., Civil Action No. D-26437 (Superior Ct., Chatham County, Ga.), decided July 19, 1974.

Iowa: In the Interest of Joyce McDonald, Melissa McDonald, Children, and the State of Iowa v. David McDonald and Diane McDonald, Civil Action No. 128/55162 (Iowa Supreme Court, October 18, 1972).

Iowa: In the Interest of George Franklin Alsager, et al. and the State of Iowa v. Mr. and Mrs. Alsager, Civil Action No. 169/55148 (Iowa Supreme Court, October 18, 1972).

F. EDUCATION

California: California Association for Retarded Children v. State Board of Education, No. 237277 (Superior Ct., Sacramento County), filed July 27, 1973.

California: Case, et al. v. State of California, Civil Action No. 101679 (Superior Ct., Riverside County).

Colorado: Colorado Association for Retarded Children v. The State of Colorado, Civil Action No. C-4620 (D. Colo.).

Connecticut: Kivell v. Nemoitan, et al., No. 143913 (Superior Ct., Fairfield County, Conn.), decided July 18, 1972.

Delaware: Beauchamp v. Jones, No. 75-350 (D. Del.), filed October 23, 1975.

District of Columbia: Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (U.S. D. Ct., D.C. 1972). Supplemental Orders on Contempt and Master, March and July, 1975.

Florida: Florida Association for Retarded Children, et al. v. State Board of Education, Civil Action No. 730250-CIV-NCR (S.D. Fla.).

Florida: Florida ex rel. Stein v. Keller, No. 73-28747 (Circuit Ct., Dade County, Fla.).

Florida: Florida ex rel. Grace v. Dade County Board of Public Instruction, No. 73-2874 (Cir. Ct., Dade County, Fla.).

Georgia: David v. Wynne, Civil No. LU-176-44 (S.D. Ga. 1976).

Kentucky: Kentucky Association for Retarded Children v. Kentucky, No. 435 (E.D., Ky.), consent decree, November, 1974.

Maryland: Maryland Association for Retarded Children, Leonard Bramble v. State of Maryland, Civil Action No. 720733-K (D. Md.). In the Maryland State Court, Equity No. 77676 (Circuit Ct. for Baltimore County), decided April 9, 1974.

Michigan: Harrison, et al. v. State of Michigan, et al., Civil Action No. 38557 (E.D., Michigan).

New Hampshire: Swain v. Barrington School Board, No. Eq. 5750 (Superior Ct., New Hampshire), decided March 12, 1976.

New York: In the Matter of Tracy Ann Cox, Civil No. H4721-75 (N.Y. Family Ct., Queens County, April 8, 1976).

New York: In the Matter of Richard G (N.Y. Sup. Ct., App. Div., 2nd Dept., May 17, 1976).

New York: Reid v. Board of Education of the City of New York, No. 8742 (Commission of Education for the State of New York), decided November 26, 1973. Federal Court Abstention Order, 453 F.2d 238 (2d Cir. 1971).

North Carolina: Hamilton v. Riddle, Civil Action No. 72-86 (Charlotte Division, W.D., N.C.).

North Dakota: In re G.H., Civil Action No. 8930 (Supreme Ct., N.D.), decided April 30, 1974.

North Dakota: North Dakota Association for Retarded Children v. Peterson (D.N.D.), filed November 1972.

Ohio: Cuyahoga County Association for Retarded Children and Adults, et al. v. Essex, No. C 74-587 (N.D. Ohio), decided April 5, 1976.

Pennsylvania: Pennsylvania Association for Retarded Children, et al. v. Commonwealth of Pennsylvania, et al., 344 F. Supp. 1275 (3-judge Court, E.D., Pa. 1971).

Rhode Island: Rhode Island Society for Autistic Children, Inc., et al. v. Board of Regents for Education of the State of Rhode Island, et al., Civil Action File No. 5081 (D.R.I.), sipulations signed September 19, 1975.

Washington: Rockafellow, et al. v. Brouillet, et al., No. 787938 (Superior Ct., King County, Wash.).

West Virginia: Doe v. Jones (Hearing before the State Superintendent of Schools), decided January 4, 1974.

Wisconsin: Marlega v. Board of School Directors of City of Milwaukee, Civil Action No. 70C8 (E.D.,Wis.), consent decree, September, 1970.

Wisconsin: Panitch, et al. v. State of Wisconsin, Civil Action No. 72-L-461 (D. Wis.).

Wisconsin: State of Wisconsin ex rel. Warren v. Nusbaum, ___ Wisc.2d ___, 219 N.W.2d 577 (Supreme Ct., Wis. 1974).

Wisconsin: Unified School District No. 1 v. Barbara Thompson, Case No. 146-488 (Cir. Ct., Dane Cty.). Memorandum Decision, May 21, 1976.

G. EMPLOYMENT

District of Columbia: National League of Cities v. Usery, ___ U.S. ___, 44 U.S.L.W. 4974 (June 24, 1976).

District of Columbia: Souder, et al. v. Brennan, et al., 367 F. Supp. 808 (D.D.C. 1973).

Florida: Roebuck, et al. v. Florida Department of Health and Rehabilitation Services, et al., 502 F.2d 1105 (5th Cir. 1974).

Iowa: Brennan v. State of Iowa, 494 F.2d 100 (8th Cir. 1973).

Maine: Jortberg v. Maine Department of Mental Health, Civil Action No. 13-113 (D. Maine), consent decree, June 18, 1974.

Missouri: Employees of the Department of Public Health and Welfare, State of Missouri v. Department of Public Health and Welfare of the State of Missouri, 411 U.S. 279 (1973).

Montana: Littlefield v. State of Montana, Civil No. 38794 (1st Jud. Dist., Montana, October 1, 1976).

Ohio: Souder v. Donahey, et al., No. 75222 (Supreme Ct., Ohio).

Ohio: Walker v. Gallipolis State Institute, Case No. 75CU-09-3676 (Court of Common Pleas, Franklin County, Ohio), dismissed September 8, 1976.

Tennessee: Townsend v. Clover Bottom Hospital and School, No. A-2576 (Chancery Court, Nashville, Tenn. 1974). Denial of defendants' motion to dismiss affirmed, 513 S.W.2d 505 (Tenn. Supreme Court 1974), appeal dismissed and certiorari denied June 9, 1975. Application by state for stay of judgment denied by Mr. Justice Stewart, June 23, 1975.

Tennessee: Townsend v. Treadway, Civil Action No. 6500 (M.D. Tenn.), decided September 21, 1973.

Wisconsin: Weidenfeller v. Kidulis, 380 F. Supp. 445 (E.D. Wis. 1975).

H. GUARDIANSHIP

Connecticut: McAuliffe v. Carlson, 377 F. Supp. 869 (D. Conn. 1974), supplemental decision, 386 F. Supp. 1245(D. Conn. 1975).

Pennsylvania: Vecchione v. Wohlgemuth, 377 F. Supp. 3161 (E.D. Pa. 1974).

I. PROTECTION FROM HARM

New York: Rodriguez v. State, 355 N.Y.S.2d 912 (Court of Claims 1974).

Pennsylvania: Janet D. v. Carros, No. 1079-73 (Court of Common Pleas, Allegheny County, Pa.), decided March 29, 1974.

J. STERILIZATION

Alabama: Wyatt v. Aderholt, 368 F. Supp. 1382 (M.D. Ala. 1972).

California: In re Kemp, 43 Cal. App. 3d 758 (Court of Appeals, 1974).

Missouri: In re M.K.R., 515 S.W.2d 467 (Supreme Ct., Mo. 1974).

North Carolina: In re Moore, 221 S.E.2d 307 (N.C. Supreme Ct., 1976).

Tennessee: In re Lambert, Civil No. 61156 (Tenn. Prob. Ct., Davidson County, March 1, 1976).

Wisconsin: In re Mary Louise Anderson (Dane County Court, Branch I, Wis.), decided November, 1974.

K. TREATMENT

Alabama: Pugh v. Locke and James v. Wallace, 406 F. Supp. 318 (M.D. Ala. 1976).

Alabama: Wyatt v. Hardin, 325 F. Supp. 781 (M.D. Ala. 1971), 344 F. Supp. 1341 (M.D. Ala. 1971), 344 F. Supp. 373, 387 (M.D. Ala. 1972), aff'd in part, modified in part sub nom. Wyatt v. Aderholt, 503 F.2d 1305 (5th Cir. 1974).

California: Revels, et al. v. Brian, M.D., et al., No. 658-044 (Superior Ct., San Francisco).

Georgia: Burnham v. Department of Health of the State of Georgia, 349 F. Supp. 1335 (M.D. Ga. 1972), 503 F.2d 1319 (5th Cir. 1974), cert. denied, ___ U.S. ___, 43 U.S.L.W. 3682 (1975).

Hawaii: Gross v. Hawaii, Civil No. 43090 (Cir. Ct., Hawaii). Consent decree, February 3, 1976.

Illinois: Nathan v. Levitt, No. 74 CH 4080 (Circuit Ct., Cook County, Ill.), consent order, March 26, 1975.

Illinois: Rivera, et al. v. Weaver, et al., Civil Action No. 72C135.

Illinois: Wheeler, et al. v. Glass, et al., 473 F.2d 983 (7th Cir. 1973).

Massachusetts: Gauthier v. Benson, Civil No. 75-3910-T (D. Mass.).

Massachusetts: Ricci, et al. v. Greenblatt, et al., Civil Action No. 72-469F (D. Mass.), consent decree, November 12, 1972.

Michigan: Jobes, et al. v. Michigan Department of Mental Health, Civil No. 74-004-130 DC (Cir. Ct., Wayne County, Mich).

Ohio: Davis v. Watkins, 384 F. Supp. 1196 (N.D. Ohio 1975).

Pennsylvania: Roe v. Pennsylvania, No. 74-519 (W.D. Pa., filed June 9 1976).

Pennsylvania: Waller v. Catholic Social Services, No. 74-1766 (E.D., Pa.).

Tennessee: Saville v. Treadway, Civil Action No. Nashville 6969 (M.D. Tenn), decided March 8, 1974. Consent Decree, September 18, 1974.

Washington: Boulton v. Morris, No. 781549 (Superior Ct., King County, Wash.), filed June 1974.

L. VOTING

Massachusetts: Boyd, et al. v. Board of Registrars of Voters of Belchertown, No. 75-141 (Sup. Jd. Ct., Mass., September 30, 1975).

New Jersey: Carroll, et al. v. Cobb, et al, No. A-669-74 and A-1044-74 (Superior Ct., N.J., Appellate Division), decided February 23, 1976.

M. ZONING

California: Defoe v. San Francisco Planning Commission, Civ. No. 30789 (Superior Ct., Calif.).

Colorado: The City of Delta v. Thompson v. Nave and Redwood, No. 75-431 (Colorado Ct. of Appeals), decided December 11, 1975.

Florida: City of Temple Terrace v. Hillsborough Association For Retarded Citizens, Inc., 44 U.S.L.W. 2189 (Fla. Ct. App. 2d District), decided October 10, 1975.

Massachusetts: Zarek v. Attleboro Area Human Services, Inc., Civil No. 2540 (Superior Ct., Mass.).

Michigan: Doe v. Damm, Complaint No. 627 (E.D., Mich.).

Minnesota: Anderson v. City of Shoreview, No. 401575 (D. Ct., Second Judicial District, Minn.), decided June 24, 1975.

Montana: State ex rel. Thelan v. City of Missoula, No. 13192 (Supreme Ct., Montana), decided December 8, 1975.

New York: Little Neck Community Association v. Working Organization for Retarded Children (N.Y. Sup. Ct. App. Div., 2d Dept., May 3, 1976).

New York: Village of Belle Terre v. Borass, 91 S.Ct. 1536 (1974).

Ohio: Boyd v. Gateways to Better Living, Inc., Case No. 73-CI-531 (Mahoning County Court of Common Pleas).

Ohio: Driscoll v. Goldberg, Case No. 72-CI-1248 (Mahoning County Ct. of Common Pleas, Ohio), 73 C.A. 49 (Ohio Court of Appeals, 7th District), decided April 9, 1974.

Wisconsin: Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 208 N.W.2d 121 (Wis. 1973), cert. denied, 94 S.Ct. 1933 (1974).

* U. S. GOVERNMENT PRINTING OFFICE : 1977 241-205/5027